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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO (FRESNO), CA Date: JAN 12 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on January 1, 1956, in Mexico. The applicant's mother, [redacted] was born in Arizona, and she is a United States citizen. The applicant's father, [redacted] was born in Mexico, and he is not a U.S. citizen. The applicant's parents married on May 28, 1943, in Mexico. The applicant seeks a certificate of citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Immigration and Nationality Act; 8 U.S.C. § 1401(g)), based on the claim that he acquired U.S. citizenship at birth through his mother.

The interim district director determined that the applicant had failed to establish his mother was physically present in the United States for ten years prior to his birth, at least five years of which occurred after she reached the age of fourteen. The interim district director noted that documentary evidence had been requested from the applicant to establish that the applicant's mother was physically present in the United States, but that the applicant had provided only affidavits to support his citizenship claim. The interim district director determined that the applicant had failed to establish that primary or secondary evidence was unavailable in his case. The interim district director noted further that the affidavits submitted by the applicant failed to establish that the applicant's mother was physically present in the U.S. for the requisite time period set forth in section 301 of the Act.

On appeal, counsel asserts that the applicant has established it is impossible to obtain primary and secondary evidence of his mother's physical presence in the U.S. between 1926 and 1956. Counsel asserts further that the affidavits submitted by the applicant establish that his mother (Ms. [redacted] was physically present in the United States for the requisite time period set forth in section 301 of the Act.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). The applicant was born in Mexico in 1956. The version of section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore controls his claim to derivative citizenship.

Section 301(a)(7) of the former Act states in pertinent part that:

> The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

The applicant must therefore establish that his mother was physically present in the U.S. for ten years between June 30, 1926 and January 1, 1956, and that five of those years occurred after June 30, 1940, when Ms. [redacted] turned fourteen.

The record contains the following evidence pertaining to Ms. [redacted] physical presence in the United States between June 30, 1926 and January 1, 1956:

An Arizona birth certificate reflecting that Ms. [redacted] was born in Arizona on June 30, 1926.

An unnotarized declaration dated July 26, 2001, written by Ms[redacted] stating, in pertinent part, that she resided in Benson, Arizona from June 30, 1926, until approximately 1934. Ms.[redacted] states that she lived in Mexico between approximately 1934 and May 1945, and that she and her husband then lived and worked on a ranch in Tornillo, Texas until 1947, when she returned to Mexico. Ms[redacted] states that she moved to El Paso, Texas in March 1948, and that she and her family lived there until approximately November 1953, when they returned to Mexico. Ms.[redacted] states that she and her family returned to live and work at the same ranch in Texas from June 1954 through September 1955, and that they then moved back to Mexico. The declaration notes that Ms.[redacted] four children were born in Mexico in January 1945, October 1947, December 1953 and January 1956.

An unnotarized declaration, dated March 3, 2003, written by Ms.[redacted] stating that she is unable to obtain evidence relating to her physical presence in the United States because she lived on farms in cottages provided by farm owners and did not pay rent or utilities. Ms.[redacted] states that she received payment in cash, without receipts and that she did not pay taxes. Ms.[redacted] states that the farms were in the countryside, and that there were no schools, churches, clinics or any other facilities nearby.

An undated, unnotarized affidavit written by the applicant's brother,[redacted] Salas, born on January 9, 1945 in Mexico. The applicant's brother states that he remembers living on a ranch in El Tornillo, Texas between 1945 and 1953, and returning to the United States again in June of 1954.

An undated, unnotarized affidavit written by the applicant's brother,[redacted] born on October 8, 1947 in Mexico. He states, in pertinent part, that he remembers working on a ranch in Texas in 1953, then moving to Mexico after his father's deportation, and later returning again to the United States.

A notarized affidavit, dated August 7, 2001, written by the applicant's paternal uncle,[redacted] stating that the applicant's father moved to the United States with his family in 1945, and that the applicant's father sent him correspondence and money from Texas for a year.

8 C.F.R. § 103.2(b)(2) states, in pertinent part:

(2) *Submitting secondary evidence and affidavits* – (i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petitions who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) *Demonstrating that a record is not available.* Where a record does not exist, the applicant or petitioner must submit an original written statement on government

letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available.

The AAO notes that the only primary evidence contained in the record regarding Ms. [redacted] physical presence in the U.S. is her 1926 birth certificate. The AAO notes further that the interim district director requested that the applicant submit additional documentation to establish that his mother was physically present in the U.S. during the requisite time period, such as Social Security earnings and school attendance records, state or federal identification documents, income tax, medical or insurance records, and bank account, housing or church records, but that none of the requested documentation was provided. In its stead, counsel submitted four affidavits stating that Ms [redacted] resided in the U.S. for the requisite time period between 1926 and 1956.

Counsel states that the requested documentation is not available because Ms [redacted] lived with her family on farm ranches without paying rent or utilities, and because they worked as field laborers in extremely remote rural areas in Texas. Counsel states further that "it is extremely unlikely that such documents actually exist", and that "given the thorough and good faith effort of [the applicant] to locate any such documents, [the applicant] has adequately demonstrated that there is no available primary or secondary evidence of Mrs [redacted] residence in the United States between 1945 and 1956."

The AAO finds that counsel has failed to provide evidence to demonstrate that the applicant made any effort to locate evidence of his mother's physical presence in the United States prior to his birth. Counsel also failed to demonstrate that primary evidence or relevant secondary evidence relating to Ms. [redacted] physical presence in the U.S. is unavailable. Accordingly, the AAO finds that the applicant has failed to overcome the presumption of ineligibility as set forth in 8 C.F.R. § 103.2(b)(2).

Moreover, as noted in the interim district director's decision, the declarations written by the applicant's mother, and submitted on appeal lack probative value because, under 8 C.F.R. § 103.2(b)(2), she is clearly a party to the applicant's application for a certificate of citizenship. The AAO notes further that the affidavit written by the applicant's paternal uncle also lacks probative value because he resided in Mexico during the requisite time period and had no personal knowledge of Ms. [redacted] whereabouts during that time. In addition, the AAO notes that the affidavits written by the applicant's brothers also lack probative value, in that they contain no supporting evidence or information to substantiate their employment and residence claims and because they lack basic and material details regarding the exact dates that the applicant's mother resided in the United States, the addresses at which the family resided, or the names of their employers and the locations of employment.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.